

REMARKS/ARGUMENTS

Claims 1-3, 7-9, 12-33, 37-39, 42-53, 58-60, and 63-106 were previously pending in the application. Claims 88, 97, and 102 are canceled, and claim 39 is amended herein. Assuming the entry of this amendment, claims 1-3, 7-9, 12-33, 37-39, 42-53, 58-60, 63-87, 89-96, 98-101, and 103-106 are now pending in the application. The Applicant hereby requests further examination and reconsideration of the application in view of the foregoing amendments and these remarks.

The Finality of the Present Office Action is Improper and Should be Withdrawn

Claims 88, 97, and 102 were added in response to the previous office action dated 10/03/08. Claim 88 is equivalent to original claim 39 rewritten in independent form. Claim 97 is equivalent to original claim 9 rewritten in independent form. Claim 102 is equivalent to original claim 60 rewritten in independent form. See amendment filed in response to office action dated 10/03/08.

In the present office action, the Examiner rejected (i) claim 88 under 35 U.S.C. 102(e) as being anticipated by Johnston and (ii) claims 97 and 102 under 35 U.S.C. 103(a) as being unpatentable over Johnston in view of Elko. These rejections constitute new grounds of rejection of the subject matter of original claims 9, 39, and 60.

Johnston was cited in an IDS filed by the Applicant on 10/16/08 during the period set forth in 37 CFR 1.97(c) with a statement under 37 CFR 1.97(e).

According to MPEP Section 609.04(b), if information submitted during the period set forth in 37 CFR 1.97(c) with a statement under 37 CFR 1.97(e) is used in a new ground of rejection on unamended claims, the next Office action will ***not*** be made final since in this situation it is clear that applicant has submitted the information to the Office promptly after it has become known and the information is being submitted prior to a final determination on patentability by the Office.

In view of the foregoing, the Applicant submits that the finality of the present office action is improper and should be withdrawn.

Claim Rejections - 35 U.S.C. 112

In paragraph 2 of the office action, the Examiner rejected claim 39 under 35 U.S.C. 112, second paragraph, as being indefinite. In response, claim 39 has been amended to depend from claim 31, rather than canceled claim 34.

Claim Rejections and Allowable Subject Matter

In paragraph 4, the Examiner rejected claim 88 under 35 U.S.C. 102(e) as being anticipated by Johnston.

In paragraph 6, the Examiner rejected claims 97 and 102 under 35 U.S.C. 103(a) as being unpatentable over Johnston in view of Elko.

In paragraph 7, the Examiner stated that claims 1-3, 7-9, 12-33, 37-38, 42-53, 58-60, 63-87, 89-96, 98-101, and 103-106 are allowable.

In response, although the Applicant believes that the rejections of claims 88, 97, and 102 are improper, in order to move prosecution of this application forward, the Applicant has canceled claims 88, 97, and 102, without prejudice.

In view of the above amendments and remarks, the Applicant believes that the now-pending claims are in condition for allowance. Therefore, the Applicant believes that the entire application is now in condition for allowance, and early and favorable action is respectfully solicited.

Fees

During the pendency of this application, the Commissioner for Patents is hereby authorized to charge payment of any filing fees for presentation of extra claims under 37 CFR 1.16 and any patent application processing fees under 37 CFR 1.17 or credit any overpayment to Mendelsohn & Associates, P.C. Deposit Account No. 50-0782.

The Commissioner for Patents is hereby authorized to treat any concurrent or future reply, requiring a petition for extension of time under 37 CFR 1.136 for its timely submission, as incorporating a petition for extension of time for the appropriate length of time if not submitted with the reply.

Respectfully submitted,

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